

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, et al.,)	No. 2:18-cv-1115-RSL
Plaintiffs,)	
v.)	FEDERAL DEFENDANTS'
)	ADMINISTRATIVE RECORD
UNITED STATES DEPARTMENT OF)	
STATE, et al.,)	FILED PURSUANT TO
Defendants.)	LOCAL CIVIL RULE 79(h)

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
STATE, et al.,

Defendants.

No. 2:18-cv-1115-RSL

**CERTIFICATION OF THE
FEDERAL DEFENDANTS'
ADMINISTRATIVE RECORD**

1 I, Sarah J. Heidema, do hereby declare as follows:

2 1. I am the Director of the Office of Defense Trade Controls Policy, within the Directorate
3 of Defense Trade Controls (“DDTC”), in the Bureau of Political-Military Affairs, U.S.
4 Department of State (the “Department”). I have held this position since April 2018, and my
5 responsibilities include maintaining the International Traffic in Arms Regulations (“ITAR”)
6 and providing policy guidance on the export of defense articles. I have worked in DDTC since
7 2008, including as the Division Chief for Regulatory and Multilateral Affairs within the Office
8 of Defense Trade Controls Policy and in a variety of positions covering export control issues.
9

10 2. I supervised DDTC’s review of records for the administrative record for the
11 Department’s decision to (1) announce a temporary modification of U.S. Munitions List
12 (“USML”) Category I to exclude certain technical data (the “Temporary Modification”), and
13 (2) issue a letter advising that the Published Files, Ghost Gunner Files, and CAD files, as those
14 are defined in the June 29, 2018 settlement agreement in the matter of *Defense Distributed, et*
15 *al. v. U.S. Department of State, et al.*, No. 1:15-cv-00372-RP (W.D. Tex.), were approved for
16 public release (the “Letter”). My staff, DDTC records custodians, and I conducted the search
17 for these documents.
18

19 3. The statements made in this declaration are based upon my personal knowledge or on
20 information provided to me in the course of my official duties by employees under my
21 supervision, DDTC employees who are records custodians, or other Department employees.
22

23 4. To the best of my knowledge, the materials listed in the Index to the Administrative
24 Record of the Federal Defendants provide a true, accurate, and complete listing of all non-
25 privileged documents and materials directly or indirectly considered by Department decision
26 makers in support of the decision to announce the Temporary Modification and issue the Letter.
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1 Privileged documents—such as documents in draft format, recommendation memoranda, or
2 deliberative and other privileged communications—are not included in the administrative
3 record.

4
5 5. To the best of my knowledge, the files included in the administrative record are true,
6 accurate, and complete copies of the non-privileged documents and materials listed in the
7 above-referenced Index.

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9 6. In deciding to announce the Temporary Modification and issue the Letter, the
10 Department considered, directly or indirectly, information related to 83 Fed. Reg. 24, 198 (May
11 24, 2018), which proposed in part to revise USML Category I, covering firearms and related
12 articles, to control only defense articles that serve an inherently military function or that are not
13 otherwise widely available in retail outlets in the United States and abroad. If the Department
14 finalizes the rule as proposed, technical data directly related to the firearms that are removed
15 from the USML will no longer be subject to the ITAR, including the various files covered by
16 the Temporary Modification and Letter. This notice of proposed rulemaking (“NPRM”) is
17 relevant to the Department’s decision to announce the Temporary Modification and issue the
18 Letter because it proposes to remove the firearms and directly related technical data from ITAR
19 control based on the Department’s assessment that these articles do not provide the United
20 States with a critical military or intelligence advantage.

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22 7. To populate the administrative record as to documents related to the May 2018 NPRM,
23 my staff, DDTC records custodians, and I searched available records of current and former
24 DDTC employees that were likely to contain records that were directly or indirectly considered
25 by Department decision makers. This search encompassed electronic records, including email
26 records. I understand that DDTC records custodians searched available files from former
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1 employees; they manually reviewed non-e-mail electronic files that were organized topically
2 and searched e-mail records and other electronic records that were organized generally for the
3 term firearms. DDTC records custodians provided the results of their search to my office for
4 further review. My staff and I searched our records, including emails, using search terms
5 including 3-D, 3D, DD, Defense Distributed, CAD, computer aided, firearms, Category I, and
6 additive manufacturing. My staff and I manually reviewed the documents that were culled
7 from our search and the search by DDTC records custodians to determine which records were
8 directly or indirectly considered by Department decision makers. Those materials then
9 underwent a privilege review.
10


11 8. In addition, in deciding to announce the Temporary Modification and issue the Letter,
12 the Department decision makers considered, directly or indirectly, comments received in
13 response to 80 Fed. Reg. 31,525 (Jun. 3, 2015), which proposed to revise and create various
14 definitions in the ITAR, including the definition of “technical data.” The Department accepted
15 public comment on this NPRM until August 3, 2015. I understand that the Department
16 received 2,886 comments in this NPRM directly through email and 9,985 comments through
17 the website regulations.gov. The Department reviewed all of the comments prior to issuing
18 interim final and final rules revising some of the definitions included in the NPRM. *See* 81
19 Fed. Reg. 35,611 (Jun. 3, 2016); 81 Fed. Reg. 62,004 (Sept. 8, 2016). Some public comments
20 the Department received in response to the NPRM noted a possible impact on 3-D printing
21 technologies related to firearms and discussed the Department’s regulation of such
22 technologies. The Department considered these comments when developing the May 2018
23 NPRM and evaluating the appropriate control on technical data directly related to these articles.
24

25 9. I understand that, in order to identify the website comments that were considered in the
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1 Department's decision on the Temporary Modification and Letter, all of the comments
2 submitted through regulations.gov were loaded on to the Department's LAW/Concordance
3 document review platform, which is an industry standard tool produced by LexisNexis. I
4 understand that the comments were searched using the terms 3-D, 3D, Liberator, Additive,
5 CAD, computer aided, and Defense Distributed, and that documents with these terms were
6 reviewed manually, which resulted in 5,629 relevant documents, all of which have been
7 included in the administrative record. My staff manually reviewed the comments that were
8 emailed directly to the Department and found 22 comments addressing 3-D printing
9 technologies, which also are included in the administrative record.
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13 Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is
14 true and correct.

15 Executed this 19th day of October, 2018.

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17 
18 Sarah J. Heidema
19 Director
20 Office of Defense Trade Controls Policy
21 Directorate of Defense Trade Controls
22 Bureau of Political Military Affairs
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